

REMARKS

Claims 1, and 4-9 are active.

Claims 1, 2 and 7 are objected to because of informalities. Claims 1, 2, 4-7 are rejected under 35USC 102e as being anticipated by Calvert. Claim 3 is rejected under 35USC103a as being unpatentable over Calvert and Hymel. Claim 8 is rejected under 35USC103a as being unpatentable over Calvert.

Objection to Claims 1,2 and 7.

Claims 1,2 and 7 are objected to because of informalities. Claim 1, line 3, "the display screen" now reads "a display screen". Claim 2 is cancelled, and thus the objection is moot. Claim 7, line 1 the typo "steo" is changed to "step". Thus, the objections to claims 1, 2 and 7 are believed remedied.

The Substantive Rejections under 102(e) and 103a

Claim 1 rejection as anticipated by Calvert (US Patent no. 6,526,275)

Claim 3 rejected as obvious over Calvert and Hymel (US Patent no. 6,031,467)

Claims 2 and 3 are cancelled. Claim 3 was dependent on claim 2 which was dependent on claim 1. The subject matter of claims 2 and 3 is now part of currently amended claim 1. Applicant believes claim 1 is not anticipated by the

Calvert reference, and is unobvious over the Calvert and Hymel references individually and in combination.

Claim 1 is not anticipated by Calvert

Claim 1 calls for:

broadcasting selected advertisements for display on a display screen of a cellular telephone receiver receiving a request call in the system;

displaying the selected advertisements on the cellular telephone display screen of the receiver; and

classifying the advertisements into respective categories among which pre-selected and approved categories' advertisements by the receiver are received on the display screen, and classifying emergency information in the classified categories. (emphasis added)

The present invention as claimed in claim 1 includes classifying the advertisements into respective categories. The categories are pre-selected by the receiver, and emergency information is classified in the classified categories.

The plain meaning of the claim language "emergency information" should be used when construing the claim. The MPEP states that, during examination, the words of the claim must be given their "plain meaning" unless they are defined in the specification (MPEP 2111.01). The dictionary definition of the term

“emergency” is:

“A serious situation or occurrence that happens unexpectedly and demands immediate action.” *The American Heritage® Dictionary of the English Language, Fourth Edition* (Houghton Mifflin Company, 2000).

The definition of “emergency” clearly shows that ordinary news, sports and other such information is distinct from emergency situations which demand immediate action.

By way of example, as discussed in Applicant’s specification, (pages 4-5, lines 24-1), in the case of an emergency notification, breaking news (earthquake and natural disaster) is transmitted to all cellular telephone holders in the concerned areas (specified relay stations). The data is broadcast without a communication being established to a receiver. Further, the distinction between emergency and ordinary information is discussed in the embodiment in Applicant’s specification in which pre-assigned identification codes are set up to identify and select whether the type of request call is one to N, particularly which category of advertisement, an emergency notification or one to one type. For example, Tennis in sports is #85, an emergency notification is #999, person to person (one to one) type of telephone call is #800, and absence call is #803 (specification, page 5, lines 5-8). Clearly, emergency information is distinct from other types of information according to the plain meaning found in the dictionary, and used in the

embodiment of Applicant's specification.

The Office Action concedes that the Calvert reference does not disclose the classifying step including classifying emergency information (page 4, paragraph 5). Anticipation requires all elements of the claimed invention to be disclosed by the prior art. This element is missing. Therefore, claim 1 is not anticipated by Calvert.

Additionally, the claimed invention calls for the receiver classifying the advertisements and emergency information in pre-selected and approved categories. Calvert discloses an embodiment at col. 7, lines 30-38, where a user of a communication device desires information about a product, such as a good or service, the user enters a request for the product into the communication device. The communication device then transmits the request over communication resource serving the geographic area containing the communication device. In contrast, the invention as claimed in claim 1 is categorizing broadcast information, as opposed to transmitting a request for information akin to a search engine type product search.

Claim 1 is unobviousness over Calvert and Hymel

The Office Action states that Hymel discloses a method of advertising messages to a selective call receiver and further discloses these messages

include weather and news (Hymel, col.1, lines 23-27). The Office Action concludes that it would have been obvious to a person of ordinary skill in the art to modify Calvert with Hymel since it is known in the art that news and weather alerts are used to inform users of emergency situations in order to increase user safety in emergency situations. Applicant's believe that Hymel does not remedy the deficiencies of Calvert.

Hymel discloses advertising, news and weather in col. 1, lines 23-27, however, an impermissible assumption is made that this teaches classifying emergency information as claimed in claim 1.

A *prima facie* case for obviousness has not been established with respect to claim 1. To establish a *prima facie* case for obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (MPEP 2143.03). MPEP 2143.01 states that the fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness, and the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness. The MPEP states that the prior art need also suggest the desirability of the modification or combination. Further, the MPEP states that it is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.

As discussed in regard to anticipation of claim 1, typical news and weather

reports are not considered emergency information demanding immediate action. Hymel merely discloses weather and news and does not teach or suggest inclusion of emergency information.

The conclusion that claim 1 is obvious because it is known to one of ordinary skill in the art that news and weather alerts are used in emergency situations is faulty. The MPEP states that merely stating that the invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness, and that the prior art need also suggest the desirability of the modification or combination. Here, the prior art does not suggest the claimed subject matter. The Office Action's conclusion is using impermissible hindsight to reconstruct the claimed invention using the Applicant's disclosure (MPEP2145). Applicants disclosure refers to emergency notification (specification, page 5, line 6), not the references. Specific prior art references are respectfully requested which disclose classification and categorization of emergency information, or an affidavit under 37 CFR 1.104(d) is respectfully requested as to personal knowledge pertaining to the claimed subject matter. Therefore, Calvert and Hymel do not present a prima facie case of obviousness over the claimed invention. Applicant believes claim 1 to be allowable.

Dependent claims 4-7.

Claims 4-7 are also rejected under 35 USC 102e as being anticipated by Calvert. Claims 4-7 are dependent on claim 1 and incorporate all of the subject matter claimed in claim 1, thus, these claims are not anticipated by Calvert for at least the same reasons as discussed regarding claim 1, and for the additional subject matter claimed. Thus, claims 4-7 are believed allowable.

For example, claims 4-7 claim a broadcast type advertising method without a communication being established to a receiver (specification pages 4-5, lines 26-1), in addition to the user classifying the advertisements and emergency information in pre-selected and approved categories. The claimed broadcasting and categorization is missing from Calvert.

Claim 8

Claim 8 is rejected under 35USC103a as obvious over Calvert.

Claim 8 calls for:

further including digital broadcast type advertising, and including selecting the categories from the group consisting of emergencies, sports, shopping, and investing.

Claim 8 is rejected under 35 USC 103a as obvious over Calvert. Claim 8 is dependent on claim 1 and incorporates all of the subject matter claimed in claim 1, thus, Applicant believes claim 8 to neither be anticipated or obvious over Calvert for

at least the same reasons as discussed regarding claim 1, and for the additional subject matter claimed. Claim 8 is also believed unobvious over Calvert as claiming classifying emergency information for the same reasons as discussed in regard to the Hymel reference.

Calvert does not provide a motivation or objective reason to modify it's teachings to arrive at the claimed invention. Calvert does not disclose categorizing from the group consisting of emergencies, sports, shopping, and investing.

The Office Action concludes that it would have been obvious to a person of ordinary skill in the art to modify Calvert to include the services of emergencies, sports, shopping and investing. Applicant disagrees as discussed under claim 1 above in regard to Calvert.

According to the MPEP, as discussed above, the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness, and it is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references.

Typical news and weather reports are not considered emergency information demanding immediate action. Calvert does not does not teach or suggest inclusion of emergency information. Therefore, the claim 8 is unobvious over Calvert because Calvert does not teach or suggest the group claimed.

Applicant believes claim 8 to be allowable.

Claim 9

Claim 9 includes subject matter common to claim 1 and dependent claims 4-8, such as classifying emergency information, and a digital broadcast type advertising including a one to N type broadcasting, as well as, additional subject matter (see the discussion under claims 1 and 4-8). Thus, claim 9 is believed to not anticipate and to be unobvious over the references cited above for at least the same reasons as discussed above, as well as, the additional subject matter claimed.

For example, as discussed under claims 4-7, claim 9 additionally calls for a broadcast type advertising method having a one to N type broadcasting (specification, page 4, lines 22-26) and the user classifying the advertisements and emergency information in pre-selected and approved categories. The claimed broadcasting and categorization is missing from the references cited.

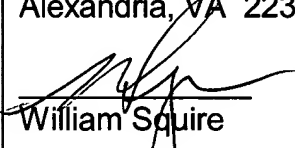
In contrast Calvert is directed to transmitting a request for information in response from a user initiating a product search, and Hymel is directed toward receiving personal messaging as well as, advertising and news type information without the claimed categorizing of the present invention. Also missing is the additional subject matter claimed in which the data is being broadcast without a

communication being established to a receiver (Applicant's specification pages 4-5, lines 24-1). Therefore, claim 9 is believed allowable.

For the reasons given, claims 1, and 4-9 are believed to be in condition for allowance, and such favorable action is hereby solicited.

A check in the amount of two hundred ten (\$210.00) dollars for a two month extension of time is included herein.

The Commissioner is authorized to charge any fees due for this paper or credit any overpayments to Deposit Account No. 03-0678.

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| <u>FIRST CLASS CERTIFICATE</u> | |
| I hereby certify that this correspondence is being deposited today with the U.S. Postal Service as First Class Mail in an envelope addressed to: | |
| Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450 | |
|  William Squire | <u>1/27/04</u> Date |

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